

REMARKS

In accordance with the foregoing, claim 10 is amended. No new matter is added to the application.

Response to Restriction

At page 2 of the Office Action, the Examiner required restriction between the following inventions:

- I. Claims 1 – 3, 8, 9, 10 and 14, drawn to a cathode active material and a lithium battery; and
- II. Claims 4 – 7 and 11 – 12 drawn to a method of preparing a cathode active material.

In response to the restriction requirement, Applicants elect **Group I, claims 1 – 3, 8, 9, 10 and 14**. The election is made with traverse.

Applicants respectfully traverse the restriction requirement on the grounds the recited groups are not independent and distinct as required by 35 U.S.C. §121 and/or on the grounds that the Examiner has not shown that there would be a serious burden for the Examiner to examine all of the claims of the application. In particular, Applicants note that claim 4 is directed to a method of preparing the cathode active material of claim 1. Therefore, a complete search of the claimed cathode active material would include and/or overlap a search of the claimed method of making the cathode active material. It is believed, moreover, that evaluation of both sets of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Group II claims by filing a divisional application.

Response to Election of Species

Also at page 2 of the Office Action, the Examiner alleged that the application contains claims directed to patentably distinct species and required an election of species. In particular, the Examiner alleged that the application contains the following distinct species:

- Ia. Claims 9 and 14, drawn to a lithium battery; and
- Ib. Claim 10 drawn to a lithium battery.

In response, applicants elect **species Ia, claims 9 and 14.**

At page 3 of the Office Action, the Examiner indicated that claims 1 – 3 and 8 are generic.

Claim 10 is amended herein to depend from claim 8. The requirement of election of species is traversed on the grounds that there would not be a serious burden on the Examiner to search and examine all of the species of the application. Reconsideration and withdrawal of the requirement for election of species are therefore respectfully requested.

Conclusion

In view of the foregoing, Applicants respectfully request that the restriction requirement and requirement of election of species be withdrawn and that all of the claims of the application be examined on the merits.

If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 503333.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

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